IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

NANCY ROBERTSON,	§	CIVIL ACTION NO. 4:11-cv-04299
	§	
Plaintiff,	§	**VANESSA D. GILMORE**
	§	Judge
V.	§	
	§	Esthela Mares
WILLIAMS-SONOMA STORES, INC. AND WILLIAMS SONOMA, INC.,	§	Case Manager
	§	
	§	
Defendants.	§	Court Reporter
	§	
		Civil Trial Proceeding

PLAINTIFF'S PROPOSED JURY INSTRUCTION ON TIMING ISSUE (WITH ANNOTATION)

Plaintiff Nancy Robertson submits this proposed jury instruction on timing (with annotations).

Respectfully submitted,

OBERTI SULLIVAN LLP

By: s/ Mark J. Oberti

Mark J. Oberti
State Bar No. 00789951
Southern District I.D. No. 17918
723 Main Street, Suite 340
Houston, TX 77002
(713) 401-3555 – Telephone
(713) 401-3547 – Facsimile
mark@osattorneys.com – E-mail

ATTORNEY-IN-CHARGE FOR PLAINTIFF
NANCY ROBERTSON

OF COUNSEL:

OBERTI SULLIVAN LLP
723 Main Street, Suite 340
Houston, TX 77002
(713) 401-3555 – Telephone
(713) 401-3547 – Facsimile

ATTORNEYS FOR PLAINTIFF
NANCY ROBERTSON

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon the counsel of record listed below by the Southern District of Texas ECF method on the 14th day of February 2013.

Tracey Kennedy
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 43rd Floor
Los Angeles, CA 90071
(213) 617.4249 – Telephone
(213) 620.1398 – Facsimile
tkennedy@sheppardmullin.com - Email

Robert Mussig
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 43rd Floor
Los Angeles, CA 90071
(213) 617.5558 – Telephone
(213) 620.1398 – Facsimile
RMussig@sheppardmullin.com - Email

Christopher Lynn Ashby
Ashby LLP
1010 Lamar Street, Suite 1200
Houston, TX 77002
(713) 739-1100 – Telephone
(713) 739-1101 – Facsimile
kit.ashby@ashby-llp.com - Email

s/ Mark J. Oberti
Mark J. Oberti

Proposed Instruction: "In determining whether Plaintiff was terminated because performance, as Defendants contend, you may only consider evidence that was known to Defendants at the time Plaintiff was terminated."

Annotation: Fifth Circuit has repeatedly emphasized that the relevant inquiry in a discrimination case is the employer's state of mind "at the time the decision was made." *See, e.g., Perez v. Texas Dept. of Criminal Justice,* 395 F.3d 206, 210 (5th Cir. 2004) (reversing district court's admission of evidence relating to facts that employer did not know about at the time it made the challenged employment decision, and holding that in an employment discrimination case, the relevant inquiry is the employer's state of mind "at the time the decision was made.") (citing *Sabree v. United Bhd. of Carpenters and Joiners Local No. 33*, 921 F.2d 396, 404 (1st Cir. 1990) (emphasizing the importance of focusing on the employer's rational at the time of the decision, rather than *post hoc* rationalizations)); *Patrick v. Ridge*, 394 F.3d 311, 319 (5th Cir. 2004) ("As the ultimate issue is the employer's reasoning at the moment the questioned employment decision is made, a justification that could not have motivated the employer's decision is not evidence that tends to illuminate this ultimate issue and is therefore simply irrelevant . . . .").